**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DAVID GEVAS,	)	
	)	
Plaintiff,	)	No. 08-CV-3074
	)	
v.	)	Judge Guzman
	)	
	)	
TERRY MCCANN, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS GHOSH AND AGUINALDO'S SUPPLEMENTAL MOTION IN LIMINE RE: PLAINTIFF'S PROPOSED EXHIBIT 3 (IDOC ADMINISTRATIVE DIRECTIVE 04.03.102)

Defendants, DR. PARTHASARATHI GHOSH, and DR. EVARISTO AGUINALDO, by their attorneys, CHARYSH & SCHROEDER, LTD., for their supplemental motion in limine respectfully request this Honorable Court to bar plaintiff's Exhibit 3 and further bar any mention of any alleged violation of this policy or procedure and further state:

1. Plaintiff seeks to introduce into evidence as Exhibit 3, IDOC Administrative Directive 04.03.102 regarding dental care.

2. At the Final Pretrial Conference the Court invited the parties to research the admissibility of such directives based on Seventh Circuit case law regarding internal police department policies relating to the use of force in Fourth Amendment cases.

3. While counsel for defendants were unable to find any precedent applying these principles to a deliberate indifference case, the rationale for the rulings applies with equal, if not greater force to an action brought under the Eighth Amendment.

4. The seminal case finding that internal police department policies are irrelevant and therefore inadmissible in an excessive force case is ***Thompson v. City of Chicago***, 472 F.3d 444 (7th Cir., 2006).

5. In ***Thompson***, the plaintiff's decedent died following a struggle with police who were trying to handcuff him following a high speed chase. The Cook County Medical Examiner later found that the death resulted, at least in part, due to a choke hold placed around Thompson's neck. The plaintiff filed suit against the officers and the police department. Plaintiff attempted to introduce evidence concerning the police department's General Orders regarding the use of force. This was excluded by the trial Court. Plaintiff appealed.

6. In affirming the exclusion of the General Orders the Seventh Circuit found they "would not have been of any consequence whatsoever and would have failed to advance the inquiry into whether Officer Haspe violated Thompson's" constitutional rights. ***Thompson,*** at 454.

7. The Seventh Circuit further stated, "In other words, the violation of police regulations or even a state law is completely immaterial as to the question of whether a violation of the federal constitution has been established." ***Thompson,*** at 454.

8. While the ***Thompson*** case addressed the admissibility of regulations in a Fourth Amendment case, nothing limits its applicability to such cases. In fact, the reasoning would apply with equal, if not greater force, to a deliberate indifference case.

9. The Court noted, "this court has consistently held that '42 U.S.C. sec. 1983 protects plaintiffs from constitutional violations, not violations of state laws or, in

this case, departmental regulations.'" ***Thompson,*** at 454, quoting ***Scott v. Edinburg***, 346 F.3d 752, 760 (7th Cir., 2003)

10. ***Thompson*** dealt with a Fourth Amendment claim, which requires a plaintiff to prove that the defendant's use of force was "objectively unreasonable" under the circumstances. In this case, the plaintiff must prove the defendants were deliberately indifferent to his serious medical needs. ***Murphy v. Walker***, 51 F.3d 714, 717 (7th Cir.1995); ***Brownell v. Figel***, 950 F.2d 1285, 1289 (7th Cir.1991); ***Salazar v. City of Chicago***, 940 F.2d 233, 239 (7th Cir.1991). "Deliberate indifference" is simply a synonym for intentional or reckless conduct, and "reckless" describes conduct so dangerous that the deliberate nature of the defendant's actions can be inferred. ***Brownell***, 950 F.2d at 1290.

11. To infer deliberate indifference on the basis of a prison physician's treatment decision, it must be so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment. ***Norfleet v. Webster***, 439 F.3d 392 (7th Cir. 2006)

12. Internal regulations regarding the use of force would appear to be a more direct benchmark of what is reasonable in effectuating an arrest, then analogous regulations showing what would be such a departure from accepted professional standards.

13. In fact, plaintiff in this case has not even established that the regulation in question is an expression of professional standards, or was even developed by anyone with the dental or medical qualifications to determine what the professional standard would be.

14. As such, the Court should bar plaintiff from introducing or discussing any internal IDOC policies, procedures or protocols including proposed Exhibit 3. These are simply not relevant to the question of whether the medical defendants acted with the requisite culpable state of mind evidencing deliberate indifference.

WHEREFORE, defendants, DR. PARTHASARATHI GHOSH, and DR. EVARISTO AGUINALDO, respectfully request this Honorable Court enter an order barring plaintiff's Exhibit 3 and further barring any mention of any alleged violation of any policy or procedure and granting such other, further relief as the Court deems just and proper.

CHARYSH & SCHROEDER, LTD.

__s/Richard A. Tjepkema________

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The undersigned attorney certifies that on June 30 2011, this document was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record at the email addresses indicated above; this notice, and the documents referred to therein have also been served on all parties not electronically served by causing a copy of the same to be placed in the U.S. Mail at 33 North Dearborn Street, Chicago, Illinois on or before 5:00 p.m. on June 30, 2011, with proper postage prepaid.

s/ Richard A. Tjepkema